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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/915,091 | 07/25/2001 | Timothy M. Schmidl | TI-31670 | 5570 |

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EXAMINER

PEREZ GUTIERREZ, RAFAEL

ART UNIT PAPER NUMBER

2686

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | |
|------------------------------------|--------------------------------|
| Application No. 09/915,091 | Applicant(s) Schmidl et al. |
| Examiner Rafael Perez-Gutierrez | Art Unit 2686 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 July 2001.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 July 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4 and 5.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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DETAILED ACTION

Priority

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

Information Disclosure Statement

2. The information disclosure statement (IDS) filed on January 22, 2002 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. In the present application, a copy of the printed publication cited has not been submitted.

3. The information disclosure statement (IDS) filed on June 5, 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. In the present application, no explanation of relevance has been provided for DE 196 51 709 which is in German language. All other references in the IDS have been considered by the Examiner and made of record in the application file.

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Specification

4. The disclosure is objected to because of the following informality: On **page 7 line 11**, replace "14" with --15-- in order to match the description of said line with figure 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless -- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 8-10, 12-16, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by **Van De Berg (U.S. Patent # 5,907,812)**.

Consider **claim 1**, Van De Berg clearly shows and discloses a method of selecting a frequency band for use in a desired radio (wireless) communication from a among a plurality of frequency bands available to be used for the desired radio (wireless) communication (abstract, figures 2 and 4, column 2 line 65 - column 3 line 6, and column 3 lines 38-48), comprising:

scanning (passively monitoring) at least one of the available frequency bands to determine whether the at least one frequency band is acceptable for the desired radio (wireless) communication (abstract, figures 2, 4, and 7-9, column 2 line 65 - column 3 line 17, column 3 lines 38-48, column 4 lines 27-39, column 7 lines 48-65, and column 9 lines 4-17); and

selecting the at least one frequency band for the desired radio (wireless) communication

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if the at least one frequency band is determined to be acceptable by said scanning (passive monitoring) (abstract, figures 2, 4, 7-9, column 3 lines 1-6 and 11-17, column 5 lines 8-12, and column 9 lines 9-30).

Consider **claim 3**, and **as applied to claim 1 above**, Van De Berg further shows and discloses that said scanning (passive monitoring) step includes monitoring interference associated with the at least one frequency band (abstract, figure 7 step 3, figure 8 step 13, figure 9 step 24, column 3 lines 1-6 and 11-17, column 9 lines 6-8, column 9 lines 57-62, and column 10 lines 46-50).

Consider **claim 4**, and **as applied to claim 1 above**, Van De Berg also discloses that said scanning (passive monitoring) step includes making an RSSI measurement with respect to the at least one frequency band (column 4 lines 57-64 and column 10 line 66 - column 11 line 3).

Consider **claim 5**, and **as applied to claim 1 above**, Van De Berg further shows and discloses that said scanning (passive monitoring) step includes scanning (passively monitoring) a plurality of carrier (narrow) frequency bands, and combining results of said scanning (passive monitoring) of said carrier (narrow) frequency bands to produce a wide band result corresponding to said at least one frequency band (figure 7 steps 2-6 and column 9 lines 4-30).

Consider **claim 8**, and **as applied to claim 1 above**, Van De Berg also discloses that said scanning (passive monitoring) step includes each of two wireless communication stations 30, 34, 40 (figures 11-13) scanning (passively monitoring) at least some of said plurality of available frequency bands (column 2 line 65 - column 3 line 7, column 5 line 21 - column 6 line 2, and column 14 lines 1-8).

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Consider **claim 9**, and as applied to **claim 8 above**, Van De Berg further discloses the step of including one of said wireless communication stations 30, 34, 40 communicating with the other of said wireless communication stations 30, 34, 40 regarding results of said scanning (passive monitoring) (figures 11-13, column 5 line 21 - column 6 line 2, and column 14 lines 1-8).

Consider **claim 10**, and as applied to **claim 1 above**, Van De Berg also shows and discloses that said scanning (passive monitoring) step includes scanning (passively monitoring) a plurality (group) of available frequency bands (abstract, figures 2, 4, and 7-9, and column 9 lines 3-21), and inherently tuning a filter (not shown) to each of said plurality (group) of available frequency bands (i.e., in order to process each of the available frequency bands a filter must be tuned to each available frequency band) (column 12 line 40 - column 13 line 5).

Consider **claim 12**, and as applied to **claim 1 above**, Van De Berg further discloses that said scanning (passive monitoring) step includes a wireless communication station 30, 34, 40 scanning (passively monitoring) a plurality (group) of available frequency bands (abstract, figures 2, 4, and 7-9, column 4 lines 27-39, column 6 lines 20-39, column 9 lines 3-21, and column 12 line 41 - column 13 line 5), and said selecting step including the wireless communication station 30, 34, 40 selecting the at least one frequency band for the desired radio (wireless) communication and informing another wireless communication station 30, 34, 40 of the selected frequency band (column 12 line 40 - column 13 line 5 and column 14 lines 1-8).

Consider **claim 13**, Van De Berg further shows and discloses a wireless communication station 30, 34, 40 (figures 11-13) comprising:

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an antenna 31, 35 (figures 11-13) for use in wireless communications (column 12 lines 3-7 and column 13 lines 42-48 and 57-62);

a band selection controller (combination of scanning means 52 and central control and application logic 51) (figures 11-13) coupled to said antenna 31, 35 for selecting a frequency band for use in a desired radio (wireless) communication from among a plurality of frequency bands available to be used for the desired radio (wireless) communication (abstract, figures 2 and 4, column 2 line 65 - column 3 line 6, column 3 lines 38-48, column 5 line 52 - column 6 line 2, and column 6 lines 20-40);

said band selection controller (combination of scanning means 52 and central control and application logic 51) (figures 11-13) operable for scanning (passively monitoring) at least one of the available frequency bands to determine whether the at least one frequency band is acceptable for the desired radio (wireless) communication (abstract, figures 2, 4, and 7-9, column 2 line 65 - column 3 line 17, column 3 lines 38-48, column 4 lines 27-39, column 5 line 52 - column 6 line 2, column 6 lines 20-40, column 7 lines 48-65, column 9 lines 4-17, column 12 lines 41-51); and

said band selection controller (combination of scanning means 52 and central control and application logic 51) (figures 11-13) further operable for selecting the at least one frequency band for the desired radio (wireless) communication if the at least one frequency is determined to be acceptable (abstract, figures 2, 4, 7-9, column 3 lines 1-6 and 11-17, column 5 lines 8-12, column 5 line 52 - column 6 line 2, column 9 lines 9-30, and column 12 lines 41-60).

Consider **claim 14**, and **as applied to claim 13 above**, Van De Berg also discloses that said band selection controller (combination of scanning means 52 and central control and

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application logic 51) (figures 11-13) includes a scanning means 52 (interference monitor) for monitoring interference associated with the at least one frequency band (column 6 lines 30-40 and column 12 lines 40-46).

Consider **claim 15**, and as **applied to claim 14 above**, Van De Berg inherently discloses that said scanning means 52 (interference monitor) must include an RSSI measurement apparatus since it is disclosed that said scanning means 52 (interference monitor) performs signal strength measurements (column 6 lines 33-37).

Consider **claim 16**, and as **applied to claim 13 above**, Van De Berg further shows and discloses a wireless communications interface (transmitter & modulator 44 and receiver & demodulator 45) (figures 11-13) coupled between said antenna 31, 35 and said band selection controller (combination of scanning means 52 and central control and application logic 51) (figures 11-13), said wireless communications interface (transmitter & modulator 44 and receiver & demodulator 45) cooperable with said band selection controller (combination of scanning means 52 and central control and application logic 51) and said antenna 31, 35 for communicating to another wireless communication station 30, 34, 40 (figures 11-13) information indicative of a result of said scanning (passive monitoring) operation (column 5 line 21 - column 6 line 2, column 6 lines 20-39, column 12 line 41 - column 13 line 5, and column 14 lines 1-8).

Consider **claim 18**, and as **applied to claim 13 above**, Van De Berg inherently teaches that said band selection controller (combination of scanning means 52 and central control and application logic 51) (figures 11-13) includes a filter (not shown) coupled to said antenna 31, 35 for tuning to each of a plurality (group) of available frequency bands (i.e., in order to process

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each of the available frequency bands a filter must be tuned to each available frequency band) (column 12 line 40 - column 13 line 5), said band selection controller (combination of scanning means 52 and central control and application logic 51) including scanning means 52 (passive monitor) coupled to said filter (inherent as explained above) for scanning (passively monitoring) each of said plurality (group) of available frequency bands (abstract, figures 2, 4, and 7-9, column 9 lines 3-21, and column 12 lines 40-60).

Consider **claim 19**, and as **applied to claim 13 above**, Van De Berg further shows and discloses a wireless communications interface (transmitter & modulator 44, receiver & demodulator 45, and scanning means 52) (figures 11-13) coupled to said antenna 31, 35 for interfacing between said antenna 31, 35 and a communications application (e.g., cordless telephone), said band selection controller (combination of scanning means 52 and central control and application logic 51) (figures 11-13), including scanning means 52 (portion of said wireless communications interface (transmitter & modulator 44, receiver & demodulator 45, and scanning means 52) (figures 11-13 and column 12 lines 41-60).

Consider **claim 20**, and as **applied to claim 19 above**, Van De Berg inherently teaches that said scanning means 52 (portion of said wireless communications interface) includes a filter (not shown) for tuning to the at least one frequency bands (i.e., in order to process the at least one frequency band a filter must be tuned to the frequency band) (column 12 line 40 - column 13 line 5) and an RSSI measurement apparatus coupled to said filter for providing an RSSI measurement with respect to the at least one frequency band since it is disclosed that said scanning means 52 (portion of said wireless communications interface) performs signal strength

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measurements (column 6 lines 33-37).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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7. **Claims 2, 6, 7, and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Van De Berg (U.S. Patent # 5,907,812)** in view of well known prior art (MPEP 2144.03).

Consider **claim 2**, and as **applied to claim 1 above**, Van De Berg clearly shows and discloses the claimed invention except that said scanning (passive monitoring) step includes monitoring communication quality associated with the at least one frequency band.

Nonetheless, the Examiner takes Official Notice of the fact that it is notoriously well known in the art to monitor the communication quality associated with a frequency band in order to determined whether or not said frequency band is acceptable for a desired communication.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Van De Berg to specifically monitor the communication quality of at least one available frequency band in order to determined if said at least one available frequency band is acceptable for a desired communication as known in the prior art. Such feature provides an additional parameter to be used for selecting an available frequency band in Van De Berg's invention in accordance with the desired communication.

Consider **claims 6, 7, and 21**, and as **applied to claims 1 and 13 above**, Van De Berg further discloses that his invention can be applied to several different technologies operating on the same geographical area and using the same frequency band (column 1 lines 57-63). However, Van De Berg does not specifically disclose that the wireless communication station is one of a Bluetooth station and an IEEE 802.11b station and that the frequency band is an IEEE 802.11b or a Bluetooth 2.0 band.

Nonetheless, the Examiner takes Official Notice of the fact that it is notoriously well

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known in the art that IEEE 802.11b and Bluetooth 2.0 are well known standards in which wireless communication stations operate and they operate within the same frequency band (i.e., 2.4 GHz).

Therefore, as suggested by Van De Berg, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to operate the teachings of Van De Berg for a Bluetooth or and IEEE 802.11b station in an IEEE 802.11b frequency band or in a Bluetooth 2.0 frequency band since these standards operate in the same frequency band as well known in the art and with the teachings of Van De Berg interference can be avoided and management of the frequency band can be efficiently accomplished between the wireless stations.

8. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Van De Berg (U.S. Patent # 5,907,812)** in view of **West (U.S. Patent # 5,574,979)**.

Consider **claim 11**, and as **applied to claim 1 above**, Van De Berg clearly shows and discloses the claimed invention except that the at least one frequency band is a frequency band associated with microwave oven interference.

In the same field of endeavor, West clearly shows and discloses a method for avoiding periodic interference in a wireless communication system in which user supported radio terminals and radio base stations monitor a frequency band for the presence of periodic interference caused by a microwave oven 4501 (figure 45) (i.e., frequency band associated with microwave oven interference) and transmit when interference is absent in said frequency band

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(figure 45, column 3 line 64 - column 4 line 23, column 5 line 62 - column 6 line 6, and column 61 lines 15-42).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the teachings of West into the method of Van De Berg in order to optimize the selection of the frequency band by monitoring a frequency band associated with microwave oven interference and transmitting in said band during acceptable periods when interference is not present. Such feature would optimized the communication procedure (West; column 61 lines 15-22).

9. **Claim 17** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Van De Berg (U.S. Patent # 5,907,812)** in view of **Souissi et al. (U.S. Patent # 6,327,300 B1)**.

Consider **claim 17**, and as **applied to claim 13** above, Van De Berg further shows and discloses a wireless communications interface (transmitter & modulator 44 and receiver & demodulator 45) (figures 11-13) coupled between said antenna 31, 35 and said band selection controller (combination of scanning means 52 and central control and application logic 51) (figures 11-13), said wireless communications interface (transmitter & modulator 44 and receiver & demodulator 45) cooperable with said antenna 31, 35 for receiving and providing to said band selection controller (combination of scanning means 52 and central control and application logic 51) a scanning (passive monitoring) result which is associated with the at least one frequency band and which has been obtained and transmitted by another wireless communication station 30, 34, 40 (column 5 line 21 - column 6 line 2, column 6 lines 20-39, column 12 line 41 - column

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13 line 5, and column 14 lines 1-8).

However, Van De Berg fails to specifically disclose that said band selection controller (combination of scanning means 52 and central control and application logic 51) is operable for determining whether the at least one frequency band is acceptable for the desired radio (wireless) communication in response to said result received from said another wireless communication station 30, 34, 40.

In the same field of endeavor, Souissi et al. clearly show and disclose an apparatus for dynamic spectrum allocation in which a transceiver 10 (wireless communication station) (figure 1) includes a processor or controller 12 (band selection controller) that receives a communication request from a second transceiver device (another wireless communication station) on a dynamically selected portion of the spectrum (at least one frequency band) selected (as result of monitoring) by the second transceiver device (another wireless communication device) (figures 1 and 2, column 2 lines 16-22, and column 2 lines 48-60), said processor or controller 12 (band selection controller) determining whether or not said selected portion of the spectrum (at least one frequency band) is acceptable for the desired wireless communication in response to said request received from said second transceiver device (another wireless communication station) (figure 2, column 2 lines 22-35 and 60-65, and column 3 line 20 - column 4 line 3).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the selection technique taught by Souissi et al. into the wireless communication station of Van De Berg in order to significantly enhanced the dynamic selection of the frequency band to be used in the desired communication by, for example,

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accounting for unknown interferers to one of the transceiver devices during the selection process (Souissi et al.; column 3 lines 37-44).

Conclusion

10. Any response to this Office Action should be **faxed to (703) 872-9306 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Crystal Park II
2021 Crystal Drive
Arlington, VA 22202
Sixth Floor (Receptionist)

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rafael Perez-Gutierrez whose telephone number is (703) 308-8996. The Examiner can normally be reached on Monday-Thursday from 6:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Marsha D. Banks-Harold can be reached on (703) 305-4379. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700 or call

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customer service at (703) 306-0377.



Rafael Perez-Gutierrez

R.P.G./rpg **RAFAEL PEREZ-GUTIERREZ**
PATENT EXAMINER

March 2, 2004